IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS HOUSTON DIVISION

United States Courts Southern District of Texas FILED

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MARK NEWBY,)	Michael N. Milby, Clerk
Plaintiff,)	
VS.)	CIVIL ACTION NO.H-01-3624 (Consolidated)
ENRON CORP., et al.,)	(Consolidated)
Defendants,)	

RESPONSE OF DEFENDANTS RICHARD A. CAUSEY AND RICHARD B. BUY TO AMERICAN NATIONAL INSURANCE COMPANY'S OBJECTION TO CONSOLIDATION

On March 7, 2002, Plaintiffs American National Insurance Company and others ("American National") filed an objection to the consolidation of their case, Civil Action No. G-02-0084, into *Newby v. Enron Corporation*, Civil Action No. H-01-3624. American National's objection should be overruled for the following reasons:

American National raises essentially the same objection to consolidation that this Court denied in *Coy v. Arthur Andersen*, instrument 279 in *Newby*, entered on February 13, 2002. There the Plaintiffs argued that, because their claims were based solely on state law, it was unfair and inefficient for them to be consolidated into *Newby*, especially in light of the procedural requirements under the Private Securities Reform Act of 1995, 15 U.S.C. §77z-1 (the "PSLRA") and the different proof requirements between the state and federal causes of action.

American National is a member of the putative class in *Newby*. To get around the state law claims exclusions of the PSLRA and the Securities Litigation Uniform Standards Act of 1998, 15 U.S.C. §§ 77p and 78bb(f), ("SLUSA"), Plaintiffs have sought to prosecute separate state law claims

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individually in a different forum. However, American National should not be permitted to divide its claims into Federal Securities Exchange Act class claims in one forum and individual state claims in another forum. American National's state law claims are so related to the claims brought in the *Newby* consolidated class action that they form part of the same case or controversy under Article III of the United States Constitution. Plaintiffs' state law claims are not truly separate and distinct. They allege the same fraudulent scheme, based on the same conduct, arising from the same nucleus of operative facts. Judicial efficiency as well as the best use and preservation of limited party resources compels consolidation of this action.

Underlying American National's objection to consolidation is its objection to removal. There is no reason that the case should not be consolidated into *Newby* if it was properly removed. Defendants Causey and Buy consented to removal of Plaintiffs' lawsuit. As explained in Arthur Andersen's Response to Plaintiffs' Motion to Remand filed February 26, 2002, which is adopted and incorporated herein by reference, this case was properly removed.

For the reasons stated in Arthur Andersen's Response to Plaintiffs' Motion to Remand, the reasoning of this Court in *Coy v. Arthur Andersen*, and the reasons set forth above, Defendants Causey and Buy respectfully request this Court to deny American National's request for oral argument, overrule American National's objection to consolidation and deny American National's Motion to remand.

Respectfully submitted,

Jacks C. Nickens)

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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing document was forwarded to all known counsel of record by facsimile on this 27th day of March, 2002.

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